



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Coastal Precast Systems, LLC VPDES Permit No. VA0089818

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Coastal Precast Systems, LLC, for the purpose of resolving certain violations of the Permit, the State Water Control Law and the VPDES Permit Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "CPS" means Coastal Precast Systems, LLC, a company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. CPS is a "person" within the meaning of Va. Code § 62.1-44.3
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "DMR" means Discharge Monitoring Report.

6. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
7. "Facility" means the CPS facility at 1320 Yacht Drive in Chesapeake, Virginia, at which it manufactures precast/prestressed concrete noise walls and other structural and architectural products.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" means VPDES Permit No. VA0089818, which was issued under the State Water Control Law and the Regulation to CPS effective August 4, 2008, and expiring August 3, 2013.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

16. "305(b) report" means the report required by Section 305(b) of the Clean Water Act [33 United States Code § 1315(b)] and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
17. "TPH" means total petroleum hydrocarbons.
18. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
19. "TSS" means total suspended solids.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. CPS owns and operates the Facility in Chesapeake, Virginia. The Permit authorizes CPS to discharge storm water from its three external outfalls (Outfalls 001, 002 and 003) under conditions outlined in the Permit. Outfall 001 discharges from a retention pond in the northwest corner of the Facility that collects storm water from the Facility's main production and storage areas. Outfall 002 discharges storm water runoff that is collected in a series of drop inlets in a paved roadway that runs through the center of the Facility. Outfall 003 discharges from a retention pond in the southwest corner of the Facility that collects storm water from an area on the Facility on which idle equipment is stored. All three outfalls discharge to the Southern Branch of the Elizabeth River ("Southern Branch").
2. The Southern Branch is located in the James River Basin and is listed in DEQ's 305(b) report as impaired due to estuarine bioassessments, polychlorinated biphenyl ("PCB") and dioxin in fish tissue, and low dissolved oxygen ("DO"). The sources of the PCB and estuarine bioassessments impairments are believed to include contaminated sediments; industrial point source discharges are among the suspected sources of the DO impairment. The Southern Branch is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
3. CPS is the subject of a Special Order by Consent with the State Water Control Board effective December 5, 2008 ("2008 Order"), which addresses permit-limit exceedances and deficiencies noted during a November 2, 2007, DEQ compliance inspection. Among other things, the 2008 Order requires CPS to operate the Facility in accordance with the Permit.

4. Part I.A.1 of the Permit requires CPS to submit DMRs for discharges from the Facility to state waters through Outfalls 001 and 002. Effluent characteristics at Outfall 001 are to be monitored monthly with the exception of TPH, which is to be monitored quarterly. Effluent characteristics at Outfall 002 are to be monitored quarterly. The Permit does not require Outfall 003 to be monitored. Parts I.A.1 and II.I.3 of the Permit require CPS to attach to a DMR that reports a violation of Permit requirements a brief explanation describing the causes of the violation and corrective actions taken.
5. Part I.B.6.b.(5) of the Permit defines “process wastewater” to include precipitation runoff that contacts surfaces contaminated with raw and/or cementitious materials or dried/crushed concrete.
6. Part I.B.6.f.(2) of the Permit provides that the storm water retention pond associated with Outfall 001 shall receive only uncontaminated storm water runoff.
7. Part II.D of the Permit requires CPS to provide to DEQ, within a reasonable time, copies of records required to be kept by the Permit.
8. In submitting its DMR for Outfall 001 for the 4th Quarter of 2009 CPS did not record a value for TPH as required by Part I.A.1 of the Permit. No letter explaining the omission was included with the DMR.
9. In submitting its DMRs for Outfall 002 for the 4th Quarter of 2009 and the 2nd and 4th Quarters of 2010, CPS indicated that it exceeded the discharge limitation contained in Part I.A.1 of the Permit for pH. No letter explaining the exceedance was included with the DMR for the 2nd Quarter of 2010.
10. In submitting its DMR for Outfall 001 for January 2011, CPS indicated that it exceeded the discharge limitation contained in Part I.A.1 of the Permit for TSS. No letter explaining the exceedance was included with the DMR.
11. In submitting its DMR for Outfall 002 for the 1st Quarter of 2011, CPS indicated that it exceeded the discharge limitation contained in Part I.A.1 of the Permit for pH. No letter explaining the exceedance was included with the DMR.
12. In submitting its DMR for Outfall 002 for the 2nd Quarter of 2011, CPS did not record an accurate value for TPH as required by Part I.A.1 of the Permit as one of the two major components of TPH – gasoline-range organics – had not been analyzed. No letter explaining the omission was included with the DMR.
13. In submitting its DMR for Outfall 001 for the 3rd Quarter of 2011 CPS did not record a value for TPH as required by Part I.A.1 of the Permit. No letter explaining the omission was included with the DMR.

14. In submitting its DMR for Outfall 001 for September 2011, CPS indicated that it exceeded the discharge limitation contained in Part I.A.1 of the Permit for TSS. No letter explaining the exceedance was included with the DMR.
15. During a routine Facility inspection on November 12, 2010, and subsequent record review DEQ staff documented that the DMRs and associated chains of custody and reports of analysis for February, June and November 2009 and the 1st and 3rd Quarters of 2010 were incomplete. In a letter to CPS dated December 12, 2010, staff requested that the DMR deficiencies be corrected by January 12, 2011. Despite followup letters from DEQ dated January 24, 2011, March 9, 2011, and April 12, 2011, the requested information was not provided as required by Part II.D of the Permit.
16. During a routine Facility inspection on March 10, 2011, DEQ staff made the following observations:
 - a. Storm water was observed flowing from the Facility's production area in a northerly direction into the storm water retention pond associated with Outfall 001 through a swale, which was filled with apparent cementitious material. The storm water entering the pond through the swale was tested by staff and determined to have a pH of 12.0 SU. A large deposit of apparent cementitious material was observed in the pond at the point where the storm water from the swale enters the pond. Storm water was also entering the pond from a ditch that captures storm water from the area of the Facility to the west of the pond where waste concrete is stored. The water in the ditch at the point where it entered the pond was observed to be slightly turbid, tested by staff, and determined to have a pH of 9.4 SU. As noted in paragraph C(5) above, the storm water observed entering the storm water retention pond through the swale is considered process waste water as it had come into contact with a surface contaminated with cementitious material. Part I.B.6.f.(2) of the Permit does not authorize the pond to receive process wastewater or contaminated storm water.
 - b. The storm water that had collected in the ditch to the west of the storm water retention pond was observed overflowing the ditch and discharging into State waters. The water discharging from the ditch was tested by staff and determined to have a pH of 9.4 SU.
17. TRO issued the following Notices of Violation: NOV No. W2011-04-T-0002 (dated April 26, 2011) for the Permit violations noted in paragraphs C(10), C(11), and C(16), above; NOV No. W2011-05-T-0003 (dated June 7, 2011) for the Permit violation noted in paragraph C(15), above; NOV No. W2011-09-T-0001 (dated September 27, 2011) for the Permit violation noted in paragraph C(13), above; and NOV No. W2011-11-T-0001 (dated November 8, 2011) for the Permit violations noted in paragraphs C(8), C(12) and C(14), above.
18. A representative of CPS responded to the April 26, 2011, NOV by letter dated May 6, 2011, in which he attributed the elevated TSS reported on the January 2011 DMR for Outfall 001 to wind having blown dust and dirt into the storm water retention pond and

the elevated pH reported on the March 2011 DMR for Outfall 002 to dust generated by vehicular traffic on the main roadway being deposited in the drop inlets. The response committed CPS to improve overall Facility housekeeping and to reduce vehicular traffic on the main roadway. The response continued that a berm had been created along the side of the storm water ditch to prevent future unauthorized discharges. DEQ has no record of CPS having responded to the September 27, 2011, and November 8, 2011, NOVs.

19. In response to the June 7, 2011, NOV, representatives of CPS met with DEQ compliance and enforcement staff on July 20, 2011, to discuss possible physical and operational changes that could be made at the Facility to prevent storm water from coming into contact with pollutants. The CPS representatives stated that they would be extending the paved portion of the central roadway to reduce the amount of dust and dirt that enters the drop inlets and acknowledged that they had not fully understood the distinction between process waste water and storm water as it related to the storm water retention pond. CPS representatives have been working with DEQ permitting staff to develop a solution. On August 4, 2011, CPS submitted a proposed plan to expand the size of the storm water retention pond, to construct a settling basin that would trap the sediment entrained in the storm water before it entered the retention pond, and to possibly modify the Permit to allow Outfall 001 to discharge treated process waste water.
20. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
21. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
22. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
23. The Department has issued no permits or certificates to CPS for the Facility under State Water Control Law and the Regulation other than VPDES Permit No. VA0089818.
24. Water with elevated pH (above 9.0 SU) is considered a pollutant under 9 VAC 25-31-10 because it may cause or contribute to pollution of state waters by altering the chemical properties of state waters in a manner as is likely to render such waters harmful or detrimental or injurious to the health of animals, fish, or aquatic life.
25. Based on the results of the DMRs and accompanying documentation submitted by CPS to DEQ for the months of January 2011 and September 2011 and for the 4th Quarter 2009, 2nd and 4th Quarters 2010 and 1st, 2nd and 3rd Quarters 2011, and CPS’ responses to the NOVs, the Board concludes that CPS has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging storm water with elevated pH from the Facility through an unpermitted outfall while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(8) through C(16), above.

26. In order for CPS to complete its return to compliance, DEQ staff and representatives of CPS have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders CPS, and CPS agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$14,315 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CPS shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CPS for good cause shown by CPS, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, CPS admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CPS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

4. CPS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CPS declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CPS to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CPS shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CPS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CPS shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which CPS intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and CPS. Nevertheless, CPS agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after CPS has completed all of the requirements of the Order;
- b. CPS petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or,
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CPS.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CPS from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by CPS and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CPS certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CPS to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CPS.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. This Order hereby supersedes and cancels the 2008 Order referenced in paragraph C(3), above.
16. By its signature below, CPS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25 day of June, 2012.

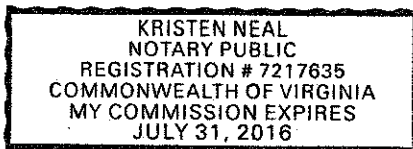
Janice D. Doll
Regional Director
Department of Environmental Quality

Coastal Precast Systems, LLC, voluntarily agrees to the issuance of this Order.

Date: 4-10-2012 By: *[Signature]*, *Pres.*
(Person) (Title)
Coastal Precast Systems, LLC

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 10th day of
April, 2012, by Paul Ogorchock who is
President of Coastal Precast Systems, LLC, on behalf of the company.



Kristen Neal
Notary Public
7217635
Registration No.

My commission expires: July 31, 2016

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

CPS shall:

1. By September 15, 2012, submit to DEQ Tidewater Regional Office, for review and approval, a corrective action plan ("plan") and schedule to:
 - reduce the amount of pollutants that enter the drop inlets associated with Outfall 002;
 - prevent process wastewater and contaminated storm water from entering the storm water retention pond associated with Outfall 001;
 - ensure that DMRs and the associated chains of custody are complete and accurate and record all parameters, including TPH, required to be monitored by the Permit; and
 - improve CPS' responsiveness in explaining the causes of and actions taken in response to Permit violations reported on DMRs.

Any construction or physical alterations to the Facility required by the approved plan and schedule shall be complete by September 30, 2013. Upon approval, the plan and schedule shall become a part of and enforceable under the terms of this Order.

2. Comply with all conditions of the Permit.
3. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462